IN THE HIGH COURT OF BOMBAY AT GOA
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WRIT PETITION NO. 34 OF 2004

1. Smt. Maria Clara Pinto D'Cruz, aged 93 years, landlady, Senior Citizen, represented by her daughter Miss Maria Idalina Dores D'Cruz as her Power of Attorney holder, and

2. Miss Maria Idalina Dores D'Cruz, aged 56 years old, landlady, both r/o House No.442, and 441, Devote Marfondem, V.P. Loutlim, Taluka Salcete, South District, Goa. ... Petitioners

Versus

1. Smt. Concecao Andre Fernandes, of late Shri Andre Fernandes, aged about 61 years old, housewife,

2. Shri Manuel Andre Fernandes, aged about 40 years old, s/o late Shri Andre Fernandes, employed in Five Star Hotel,

3. Smt. Antonette Antonio Fernandes, wife of Antonio Andre Fernandes, major of age, teacher,

4. Shri Anton Andre Fernandes, son of late Shri Andre Fernandes, employed in Five Star Hotel,

5. Shri Cosme Andre Fernandes, s/o late Shri Andre Fernandes, aged 20, and

6. Smt. Sebastiana Manuel Fernandes, wife of Shri Manuel Fernandes, aged about 35 years old, housewife, all r/o Make Shift temporary tatched roofed hut no. 42, Waddo,

Cocolna-Bogmalo, Village
Panchayat, Taluka
Mormugao, Goa. ...Respondents.

Shri Abhay Nasnodkar, advocate for the petitioners.

Shri Guru Shirodkar, advocate for respondent nos. 1 to 6.

CORAM : D. G. KARNIK, J.

DATE : 25th March, 2004

ORAL JUDGMENT

Rule. By consent, Rule made returnable forthwith. On 5th February, 2004, this Court had issued notice to the respondents stating that the petition would be heard finally at the stage of admission itself. Accordingly, the petition is heard finally.

2. The application for amendment of the plaint filed by the petitioners has been rejected by the trial Court principally on two grounds:-

(i) The amendment was clarificatory of the pleadings and does not bring on record subsequent events; and

(ii) the amendment relates to an event dated 3rd October, 2003, which was prior to the suit and hence, the amendment could not be allowed.

The learned Judge appears to be under a misconception that the amendment can be allowed only if it relates to a future event and not in respect of an event

anterior to the filing of the suit. An accidental omission, and sometimes even an omission arising out of negligence in the pleadings, can always be added by an amendment, if it can be done without causing prejudice to the other side.

3. The courts have adopted liberal approaches in allowing an amendment. Rules of procedure are handmaid of justice, and cannot be used to deny justice by refusing a just amendment. However, negligent a party may be, at the initial stage, he cannot be denied a just amendment unless it is shown that allowing of the amendment would cause irreparable loss to the other side.

4. Equally, an amendment cannot be denied on the ground that it is merely clarificatory and does not relate to a future event.

5. In the circumstances, the Writ Petition is allowed. Rule is made absolute in terms of prayer clause (a).

D. G. KARNIK, J.

mc.